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11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA
13 SOUTHERN DIVISION

14 RICHARD GAMMEL, Individually and)
15 on Behalf of All Others Similarly)
Situating,)

16 Plaintiff,)

17 vs.)

18 HEWLETT-PACKARD COMPANY, et)
19 al.,)

20 Defendants.)
21

No. SACV-11-01404-AG(RNBx)

CLASS ACTION

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
THE MOTION FOR APPOINTMENT
OF JOSEPH J. KOWALCZYK,
INDIVIDUALLY AND AS TRUSTEE
FOR THE JOSEPH J. KOWALCZYK
TRUST U/A/D DECEMBER 20, 1985,
AS LEAD PLAINTIFF AND
APPROVAL OF SELECTION OF
LEAD COUNSEL

22 DATE: December 19, 2011
23 TIME: 10:00 a.m.
CRTRM: 10D
24 JUDGE: Hon. Andrew J. Guilford
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I. PRELIMINARY STATEMENT

This is a securities class action brought on behalf of all those who purchased or otherwise acquired the common stock of Hewlett-Packard Company (“HP” or the “Company”) between November 22, 2010 and August 18, 2011 (the “Class Period”).

Joseph J. Kowalczyk, individually and as trustee for the Joseph J. Kowalczyk Trust u/a/d December 20, 1985 (“Kowalczyk”), now submits this memorandum of law in support of his motion for an order: (i) appointing Kowalczyk as lead plaintiff; and (ii) approving Kowalczyk’s selection of Robbins Geller Rudman & Dowd LLP (“Robbins Geller”) as lead counsel for the class. 15 U.S.C. §78u-4(a)(3)(B).

This Motion is made on the grounds that Kowalczyk is the “most adequate plaintiff” as defined by the PSLRA. *See generally In re Cavanaugh*, 306 F.3d 726 (9th Cir. 2002). Kowalczyk suffered losses of approximately \$415,168 during the Class Period and otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure. *See id.* at 729; O’Mara Decl., Ex. C.¹ Finally, Kowalczyk has selected counsel with the experience necessary to vigorously and efficiently prosecute this litigation on behalf of the class. *See* O’Mara Decl., Ex. D.

II. STATEMENT OF FACTS

HP is a provider of products, technologies, software, solutions and services to individual consumers, small- and medium-sized businesses and large enterprises, including customers in the government, health and education sectors.

During the Class Period, defendants issued materially false and misleading statements regarding the Company’s business and financial results. As a result of

¹ References to the “O’Mara Decl.” are to the exhibits attached to the Declaration of Brian O. O’Mara in Support of the Motion for Appointment of Joseph J. Kowalczyk, Individually and as Trustee for the Joseph J. Kowalczyk Trust u/a/d December 20, 1985, as Lead Plaintiff and Approval of Selection of Lead Counsel, submitted concurrently herewith.

1 defendants' false statements, HP's stock traded at artificially inflated prices during the
2 Class Period, reaching a high of \$48.99 per share on February 16, 2011.

3 HP is the leading provider of commercial and consumer personal computers
4 ("PCs") through its Personal Services Group ("PSG") segment, commanding nearly
5 20% of the PC market worldwide. The PSG segment is HP's largest business segment
6 from a revenue perspective, generating over 30% of HP's revenues. In July 2010, HP
7 completed its acquisition of Palm Inc., a provider of smartphones powered by the
8 Palm webOS mobile operating system, for \$1.2 billion. Palm was failing at the time
9 of the acquisition. HP's primary motive for the acquisition was to purchase webOS
10 and "to double down on webOS," with the Palm acquisition being portrayed as a game
11 changing event.

12 During the Class Period, defendants highlighted HP's ownership of both
13 hardware and software, which differentiated the Company from other high tech
14 companies, as a defining aspect of the Company's value proposition, enabling the
15 Company's business model to benefit from scale and leadership in its core businesses.
16 Defendants further represented that webOS, HP's crown jewel from the Palm
17 acquisition, was going to play an integral role in the Company's strategy going
18 forward, including running on HP's new TouchPad tablet PC as well as on all of the
19 Company's PCs by 2012. Defendants further reconfirmed the strategic importance of
20 PCs to the Company.

21 On August 18, 2011, HP issued a press release announcing disappointing third
22 quarter fiscal 2011 financial results, as well as a major change of direction for the
23 Company. The Company reported net earnings of \$1.9 billion, or \$0.93 diluted
24 earnings per share ("EPS"), and net revenue of \$31.2 billion for the third quarter ended
25 July 31, 2011. The Company additionally issued revised guidance for fiscal year
26 2011, reducing its revenue guidance to a range of \$127.2 to \$127.6 billion, versus
27 previous guidance of \$129 to \$130 billion, and its diluted EPS guidance to a range of
28 \$3.59 to \$3.70 per share, versus previous guidance of at least \$4.27 per share.

1 HP further announced several major shifts in its long-term business model.
2 First, it was purchasing enterprise content management and search vendor Autonomy
3 Corporation plc for \$10.3 billion, agreeing to pay a 64% premium for the company
4 over its prior closing day price. Second, the Company announced it was exploring
5 strategic alternatives for its PSG segment, including potentially selling or spinning off
6 its profitable PC division. Third, the Company announced that it “will discontinue
7 operations for webOS devices, specifically the TouchPad and webOS phones.”

8 As news began to leak into the market, on August 18, 2011, HP’s stock
9 declined \$1.88 per share, to close at \$29.51 per share, a one-day decline of nearly 6%
10 on volume of over 96 million shares. The next day, HP’s stock collapsed as the
11 market fully digested the news of the Company’s dismal results and outlook and the
12 serious changes in its strategic vision. On August 19, 2011, HP’s stock price
13 plummeted to its lowest level in 6 years, trading as low as \$22.75 per share before
14 closing at \$23.60. This represented a decline of \$5.91 per share, or 20%, on volume
15 of 129 million shares. This was the largest one-day decline in HP’s history since the
16 Black Monday stock market crash of October 1987.

17 On August 19, 2011, CRN published an article entitled “HP Partners Startled by
18 TouchPad’s Demise, Uncertain WebOS Future.” The article provided in part:

19 Chris Barnes, vice president of research and solutions development at
20 Gap Intelligence, a San Diego-based research firm that follows HP,
21 wonders if the HP brass really believed the WebOS talking points.
22 “WebOS was such a linchpin of the company’s overarching strategy; it
23 was the virtual glue that tied together phones, PCs, tablets, printers,”
24 Barnes said. “It really makes you wonder whether HP’s senior leadership
25 ever really believed its own story about developing its own self-
26 supporting ecosystem, vis-a-vis Apple. [It] sounds more like they were
27 dishing out the Kool-Aid but secretly drinking iced tea.”
28

1 The true facts, which were known by the defendants but concealed from the
2 investing public during the Class Period, were as follows:

3 (a) HP's business model was not working. The Company was unable to
4 leverage its extensive portfolio and scale of products and services in a strategically
5 beneficial manner.

6 (b) WebOS, the TouchPad and the PC business were not central to HP's
7 business model and webOS would not be integrated across the Company's entire
8 product line.

9 (c) The TouchPad hardware was inefficient, limiting the degree of
10 effectiveness of the webOS operating system. In fact, webOS operated twice as fast
11 when loaded onto Apple's iPad 2 tablet compared to the TouchPad.

12 (d) Based on the foregoing, defendants lacked a reasonable basis for their
13 positive statements about HP's turnaround, revenue growth rates, market share, new
14 product introductions, diluted EPS, and the Company's ability to deliver upon its
15 long-term growth model.

16 (e) As a result of defendants' false statements, HP stock traded at artificially
17 inflated levels during the Class Period. However, after the above revelations seeped
18 into the market, the Company's shares were hammered by massive sales, sending
19 them down 52% from their Class Period high.

20 **III. ARGUMENT**

21 **A. Kowalczyk Is the "Most Adequate Plaintiff" and Should Be** 22 **Appointed Lead Plaintiff**

23 **1. The PSLRA's Lead Plaintiff Provisions**

24 The PSLRA governs the appointment of a lead plaintiff in "each private action
25 arising under [the Securities Exchange Act of 1934] that is brought as a plaintiff class
26 action pursuant to the Federal Rules of Civil Procedure." 15 U.S.C. §§78u-4(a)(1)
27 and (a)(3)(B)(i). First, the plaintiff who files the initial action must publish a notice to
28 the class, within 20 days of filing the action, informing class members of their right to

1 file a motion for appointment as lead plaintiff. 15 U.S.C. §78u-4(a)(3)(A)(i). Here,
 2 the first notice regarding the pendency of this action was published on *Business Wire*,
 3 a national, business-oriented newswire service, on September 13, 2011.² See O’Mara
 4 Decl., Ex. A. Within 60 days after publication of the notice, any person who is a
 5 member of the proposed class may seek to be appointed as lead plaintiff, whether or
 6 not they have previously filed a complaint in the action. 15 U.S.C. §§78u-4(a)(3)(A)
 7 and (B).

8 Second, the PSLRA provides that, within 90 days after publication of the
 9 notice, the court shall consider any motion made by a class member and shall appoint
 10 as lead plaintiff the member or members of the class that the court determines to be
 11 most capable of adequately representing the interests of class members. 15 U.S.C.
 12 §78u-4(a)(3)(B). In determining the “most adequate plaintiff,” the PSLRA provides
 13 that:

14 [T]he court shall adopt a presumption that the most adequate plaintiff in
 15 any private action arising under this [Act] is the person or group of
 16 persons that –

17 (aa) has either filed the complaint or made a motion in response to a
 18 notice . . . ;

19 (bb) in the determination of the court, has the largest financial interest in
 20 the relief sought by the class; and

21 (cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules
 22 of Civil Procedure.

23 15 U.S.C. §78u-4(a)(3)(B)(iii).

24
 25
 26 ² *Business Wire* is “a national, business oriented newswire service, as required by
 27 15 U.S.C. §78u-4(a)(3)(A)(i).” *Bassin v. Decode Genetics, Inc.*, 230 F.R.D. 313, 314
 28 (S.D.N.Y. 2005).

1 **2. Kowalczyk Satisfies the PSLRA’s “Lead Plaintiff”**
2 **Requirements**

3 **a. Kowalczyk’s Motion Is Timely**

4 Kowalczyk has timely filed its motion, within 60 days of the September 13,
5 2011, publication of notice, and has signed and filed a certification evidencing, among
6 other things, his willingness to serve as a representative party on behalf of the class.
7 *See* O’Mara., Ex. A. Accordingly, Kowalczyk has satisfied the individual
8 requirements of 15 U.S.C. §78u-4(a)(3)(B) and is entitled to have his application for
9 appointment as lead plaintiff considered by the Court.

10 **b. Kowalczyk Has the Largest Financial Interest**
11 **in the Relief Sought by the Class**

12 During the Class Period, Kowalczyk purchased 25,272 shares of HP common
13 stock and suffered losses exceeding \$415,168 in connection therewith. *See* O’Mara
14 Decl., Ex. C. To Kowalczyk’s knowledge, this represents the largest financial interest
15 in the relief sought by the class. *See* 15 U.S.C. §78u-4(a)(3)(B)(iii)(I).

16 **c. Kowalczyk Satisfies Federal Rule of Civil**
17 **Procedure Rule 23**

18 In addition to possessing the largest financial interest in the outcome of the
19 litigation, the lead plaintiff must also “otherwise satisf[y] the requirements of Rule 23
20 of the Federal Rules of Civil Procedure.” 15 U.S.C. §78u-4(a)(3)(B)(iii)(I). Rule
21 23(a) provides that a party may serve as a class representative only if the following
22 four requirements are satisfied:

- 23 (1) the class is so numerous that joinder of all members is impracticable;
24 (2) there are questions of law or fact common to the class;
25 (3) the claims or defenses of the representative parties are typical of the
26 claims or defenses of the class; and
27 (4) the representative parties will fairly and adequately protect the
28 interests of the class.

Id.

1 While the PSLRA dictates that a lead plaintiff meet the requirements of Rule
2 23(a), “[a]t this stage of the litigation, ‘nothing more than a preliminary showing is
3 required’ with respect to typicality and adequacy.” *Apple v. LJ Int’l, Inc.*, No. CV 07-
4 6076-GAF (JWJx) 2008 U.S. Dist. LEXIS 12618, at *16 (C.D. Cal. Feb. 8, 2008)
5 (citation omitted). Consequently, in deciding a motion to serve as lead plaintiff, the
6 court should limit its inquiry to the typicality and adequacy prongs of Rule 23(a), and
7 defer examination of the remaining requirements until the lead plaintiff moves for
8 class certification. *See Cavanaugh*, 306 F.3d at 730.

9 Rule 23(a)(3) requires that the claims or defenses of the representative parties
10 are typical of those of the class. Typicality exists where the plaintiffs’ claims arise
11 from the same event or course of conduct and are based on the same legal theories as
12 the claims of all the class members. *Takeda v. Turbodyne Techs., Inc.*, 67 F. Supp. 2d
13 1129, 1136-37 (C.D. Cal. 1999). The questions of law and fact common to the
14 members of the class which predominate over questions which may affect individual
15 class members include, among others, the following:

- 16 • Whether defendants violated the Securities Exchange Act of 1934;
- 17 • Whether defendants omitted and/or misrepresented material facts;
- 18 • Whether defendants’ statements omitted material facts necessary to make
19 the statements made, in light of the circumstances under which they were
20 made, not misleading; and
- 21 • Whether defendants knew or recklessly disregarded that their statements
22 were false and misleading.

23 There is a well-defined community of interest in the questions of law and fact
24 involved in this case, of which Kowalczyk is a part. Kowalczyk, in concert with the
25 other members of the class, alleges that defendants violated the securities laws by
26 publicly disseminating materially false and misleading statements, as well as
27 statements which omitted material facts, about HP during the Class Period. As a
28 result of defendants’ fraudulent representations and omissions, Kowalczyk, as well as

1 all other members of the class, purchased HP securities at artificially inflated prices
2 and were damaged thereby. Because the claims asserted by Kowalczyk are premised
3 on the same legal and remedial theories and are based on the same types of
4 misrepresentations and omissions as the class's claims, typicality is satisfied. *See* 7
5 Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* §22.24, at 107-08 (4th
6 ed. 2002) ("The majority of class action decisions support the view that when it is
7 alleged that the same unlawful conduct was directed at or affected both the named
8 plaintiff and the class sought to be represented, the typicality requirement is met.").

9 Under Rule 23(a)(4), a representative party must also "fairly and adequately
10 protect the interests of the class." *Id.* A lead plaintiff is adequate when there exist
11 both "common interests between the proposed lead plaintiffs and the class, and a
12 willingness on the part of the proposed lead plaintiff[s] to vigorously prosecute the
13 action.'" *Ferrari v. Gisch*, 225 F.R.D. 599, 607 (C.D. Cal. 2004) (citation omitted)
14 (alteration in original). Kowalczyk is an adequate representative. As evidenced by
15 his injuries, Kowalczyk's interests are clearly aligned with the members of the class
16 who also suffered damages due to defendants' wrongdoing and there is no evidence of
17 any antagonism between Kowalczyk's interests and those of the other members of the
18 class. Moreover, Kowalczyk's substantial losses motivate him to pursue this case
19 with vigor and he has retained competent and experienced counsel to assist in this
20 process.

21 **B. The Court Should Approve Kowalczyk's Selection of**
22 **Counsel**

23 The PSLRA vests authority in the lead plaintiff to select and retain counsel to
24 represent the class, subject to court approval. *See* 15 U.S.C. §78u-4(a)(3)(B)(v). The
25 court should not disturb lead plaintiff's choice of counsel unless necessary to "protect
26 the interests of the class." 15 U.S.C. §78u-4(a)(3)(B)(iii)(II)(aa). Kowalczyk has
27 selected Robbins Geller as lead counsel for the class.
28

1 Robbins Geller is a 180-lawyer law firm that is actively engaged in complex
2 litigation, emphasizing securities, consumer, and antitrust class actions. *See Cortese*
3 *v. Radian Group, Inc.*, No. 07-3375, 2008 U.S. Dist. LEXIS 6958, at *18 (E.D. Pa.
4 Jan. 30, 2008) (“The firm is comprised of probably the most prominent securities
5 class action attorneys in the country.”) (citation omitted); O’Mara Decl., Ex. D.
6 Robbins Geller possesses extensive experience litigating securities class actions and
7 has successfully prosecuted numerous securities fraud class actions on behalf of
8 injured investors, including *In re Cardinal Health, Inc. Sec. Litig.*, 226 F.R.D. 298,
9 308 (S.D. Ohio 2005) (“the Court finds that [Robbins Geller] will represent deftly the
10 class’s interests”) and *In re Enron Corp., Sec. Litig.*, 206 F.R.D. 427 (S.D. Tex. 2002).
11 Robbins Geller’s securities department includes numerous trial attorneys and many
12 former federal and state prosecutors, and utilizes an extensive group of in-house
13 experts to aid in the prosecution of complex securities issues. *See O’Mara Decl., Ex.*
14 *D.*

15 Thus, the Court may be assured that in the event this Motion is granted, the
16 members of the class will receive the highest caliber of legal representation available
17 from Robbins Geller. *See Schriver v. Impac Mortg. Holdings, Inc.*, No. SACV 06-31-
18 CJC (RNBx) 2006 U.S. Dist. LEXIS 40607, at *36 (C.D. Cal. May 1, 2006) (“There
19 is no real dispute among the movants regarding [Firm’s] qualifications to prosecute
20 this action.”); *Borochoff v. Glaxosmithkline PLC*, 246 F.R.D. 201, 205 (S.D.N.Y.
21 2007) (Robbins Geller is “a firm which is well qualified and has successfully served
22 as lead counsel or co-lead counsel in numerous complex securities class actions.”).
23 Accordingly, the Court should approve Kowalczyk’s selection of counsel.

1 **IV. CONCLUSION**

2 For all the foregoing reasons, Kowalczyk respectfully requests that the Court:
3 (i) appoint him as Lead Plaintiff; and (ii) approve his selection of Robbins Geller as
4 Lead Counsel.

5 DATED: November 14, 2011

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17 [Proposed] Lead Counsel for Plaintiff
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CERTIFICATE OF SERVICE

I hereby certify that on November 14, 2011, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on November 14, 2011.

s/ BRIAN O. O'MARA
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